

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF TEXAS

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No. 6:21-cv-00413

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**Kirschen Cross,**  
*Petitioner,*

v.

**Director, TDCJ-CID,**  
*Respondent.*

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**ORDER**


Petitioner Kirschen Cross, proceeding pro se and *in forma pauperis*, filed a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. The case was referred to United States Magistrate Judge John D. Love.

On March 20, 2023, the magistrate judge issued a report recommending that petitioner's petition be dismissed with prejudice and that a certificate of appealability be denied. Doc. 15. Petitioner filed objections to the report. Doc. 19. The court reviews the objected-to portions of a magistrate judge's report and recommendation de novo. *See* Federal Rule Civil Procedure 72(b)(3); 28 U.S.C. § 636(b)(1).

The magistrate judge recommended dismissal of petitioner's federal habeas petition as time-barred. Petitioner asserts that *Schlup v. Delo*, 513 U.S. 298, 315 (1995), is a gateway to overcome the time bar. He fails to support his actual innocence allegations with any new, reliable evidence that was not presented at trial and fails to show that no reasonable juror would have convicted him in the light of the new evidence. *See McGowen v. Thaler*, 675 F.3d 482, 499–500 (5th Cir. 2012).

Having reviewed the magistrate judge's report and being satisfied that it contains no error, the court accepts its findings and recommendation. This case is dismissed with prejudice.

*So ordered by the court on April 19, 2023.*

  
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J. CAMPBELL BARKER  
United States District Judge